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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,896	10/19/2000	Mark H. Theno	1335.001US1	7633

7590 12/18/2002

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Minneapolis, MN 55402

EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 12/18/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s) N .

09/691,896

Applicant(s)

THENO, MARK H.

Examiner

Lauren Q Wells

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,10-14,17-31 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 10-14, 17-31 and 38-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

Claims 1, 3-8, 10-14, 17-31 and 38-41 are pending.

***Response to Applicant's Arguments/Amendment***

The Applicant's arguments filed 11/19/02 (Paper No. 9) to the rejection of claims 1, 3-8, 10-14, 17-31, 38-41 made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive.

The Applicant's arguments filed 11/19/02 (Paper No. 9) are sufficient-in-part to overcome the 35 USC 112 rejections in the previous Office Action. In particular, the rejection of the terms "cellular structure" and "cell" in claims 1, 5, 10-11, 24-25, 29, 38 and 40-41 is overcome.

***112 Rejection Maintained***

The rejection of claims 1, 5, and 10 under 35 U.S.C. 112 is MAINTAINED for the reasons set forth in the Office Action mailed 8/14/02, Paper No. 8, and those found below.

Applicant argues, "The Applicant has amended claims 1 and 5 to address the Examiner's concerns and to further describe 'cellular portion'". This argument is not persuasive, as the claims have not been amended.

***103 Rejection Maintained***

The rejection of claims 1, 3-8, 10-14, 17-31, 38-41 under 35 U.S.C. 103(a) as being unpatentable over Cronk et al. (6,244,265) in view of Crotty (6,296,869) and Berthold (6,399,091) is MAINTAINED for the reasons set forth in the Office Action mailed 8/14/02, Paper No. 8, and those found below.

Applicant argues, "None of the references describe a hydrogel base and a cellular portion". This argument is not persuasive. The Examiner respectfully points out that the combination of Cronk et al. in view of Crotty and Berthold et al. teach a hydrogel. The Examiner respectfully points out that claim 6 recites that the cellular pad portion can be comprised of polyolefins, acrylic adhesives, and hydrogels, and Cronk et al. teach polyester, polyethylene or polypropylene, which are polyolefins, as the vapor emitting layer.

Applicant argues, "None of the references describe a foamed polyolefin, and a vapor emitting portion within this cellular portion". This argument is not persuasive, as it is not commensurate in scope with the instant independent claims, which do not recite a foamed polyolefin.

Regarding the "Unexpected Results" section in the previous Office Action, the Examiner respectfully points out that this section was added merely to aid Applicant if she decided to file unexpected results.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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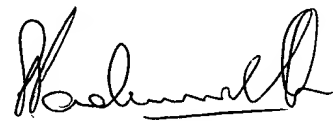
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
December 13, 2002



SREENI PADMANABHAN  
PRIMARY EXAMINER

12/13/02